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Billings Gazette
Billings, Montana

Voters support stream access bill

GazOutdoors voters overwhelmingly support passage of Senate Bill 78, which will codify into law access to streams and rivers at county bridges.

Out of 190 votes cast, 96 percent supported passage of the bill while just 4 percent voted against the idea.

Tom wrote, "SB78 deserves the support of everyone who buys a hunting OR fishing license in Montana." Ron expressed opponents' opinion saying, "SB78 is the result of an ill conceived, poorly written 'opinion' by then-



Attorney General Joe Mazurek, running for Governor and seeking support and votes."

The bill has been referred to the House Fish, Wildlife and Parks Committee but no hearing has yet been scheduled.

This week's question refers to a March 9 Billings Gazette story: Do you support the idea of constructing a whitewater park on the Yellowstone River in Billings?

Readers can register their opinion by logging on to The Billings Gazette's Outdoors blog, GazOutdoors, and vote, post their comment or both. The blog can be found online at www.gazoutdoors.com.

The GazOutdoors blog is also a great place to keep up on weekly outdoor topics of interest with Billings Gazette Outdoors editor Mark Henckel and writer Brett French.

The results of the GazOutdoors poll will be published on Sunday's Outdoors page as well as on the blog.

Missoulian
Missoula, Montana

MISSOULIAN EDITORIAL

Bridge bill offers neighborly compromise

SUMMARY:
Senate Bill 78 protects the interests of folks on both sides of the fence.

All Montanans have a constitutional right to access and make recreational use of streams. Full stop. The right exists, has been thoroughly tested in court and isn't going to be wished or finessed away by anybody.

Private property ownership also is a right, one Montanans cherish and protect.

Anybody who accepts and respects those rights – property ownership and stream access – should appreciate the merits of Senate Bill 78, praiseworthy legislation that uses common-sense compromise to salve some of the friction created where the one right tends to rub against the other.

The bill involves bridge abutments, of all things.

The public has the right to fish, float, swim or otherwise recreate anywhere within the ordinary high-water marks of streams. But people may not trespass on private property to reach streams. Either they must have permission to cross private property, or they must reach the stream through public access points, such as fishing access sites or across public land.

Or via public rights of way. That's where the bridges come in. The public owns a swath of land beneath and alongside public roads. When those rights of way cross streams, they create a perfectly legal place – where the bridge intersects the land – for people to access the stream without crossing private land. A binding state attorney general's opinion says it's so.

Some landowners don't like this or think it's right. They own the adjoining land and don't acknowledge the fact that the public right of way isn't limited to

road and bridge traffic.

Complicating matters, bridge abutments make handy places to tie in fences. This common practice forces the public to clamber over barbed wire or worse to exercise their legal right of access. This can be as hard on the fences as it is on fishing waders.

Fences extending to bridge abutments have been trouble spots. Some landowners use these fences to discourage public access – that is, to deny other Montanans their rights. Some are mostly interested in keeping their livestock where it belongs, but find the public and its wear and tear on fences vexing. Meanwhile, many recreationists legitimately view the fences as barriers to their rights. Some consider the offense justification to disrespect and violate the legitimate property rights of the owners. This is a bigger problem in some counties than others, but the state Department of Fish, Wildlife and Parks lists 131 bridges statewide where legitimate public access to streams is "impeded or unavailable due to the presence of a fence or uncooperative landowner."

One simple, obvious solution would be to bar anyone from stringing a fence into a public right of way. But that would be downright un-neighborly.

A far better solution is SB78, introduced by Sen. Lane Larson, D-Billings. Representing a thoughtful compromise of interests, this bill clarifies the rights of people on both sides of the fences, and it provides helpful remedies aimed at easing and preventing landowner-sportsman conflicts.

The bill's goal is "reasonable and safe public access" from county bridges, rights

of way and abutments. And what it basically does is require that fences tying to bridges include some means of crossing the public right of way to the stream. This could be a gate, a stile, a step – perhaps even a piece of plastic pipe containing the top strand of barbed wire to permit stepping over without snagging.

Who would pay for these minor fence improvements? Sportsmen. The bill provides \$10,000 a year for six years for the Department of Fish, Wildlife and Parks to reimburse landowners for the cost of compliance.

This bill attracted a lot of comment when it came up for hearing the other day – much of it positive. But it faces misguided opposition, too. That's too bad. As we said at the outset, anyone who respects the rights that exist under Montana's constitution should see SB78 as a problem-solver.

Let's be clear here: This bill promotes existing rights but doesn't expand anyone's rights. It doesn't allow anyone to enter private property without permission. It doesn't create any new liability for anyone. It will reduce damage and the need for irksome repairs on fences. And it will reduce landowner-sportsman conflicts.

The bill won't solve all problems. Litter, traffic, parking and riddens are issues now and they'll likely be issues still needing management after this bill is signed into law. But this bill will smooth the waters, so to speak – considerably. It'll help keep landowners and sportsmen and counties out of court.

SB78 affirms and fosters respect for the legitimate rights existing on both sides of the fence, and it deserves passage into law.

OPINION

BOZEMAN DAILY CHRONICLE

MONDAY, MARCH 19, 2007

Stream access bill balances private and public rights

The Headwaters Chapter of the Federation Of Fly Fishers is a not-for-profit corporation dedicated to teaching and education in all matters relating to flyfishing in the state of Montana. Our board of directors would like to take this opportunity to respond to the opinions Terry Anderson expressed in the Chronicle on Monday, March 5.

The focus of his piece was Senate Bill 78 and its presumptive threats to private property rights of landowners in Montana through whose land state-owned, public waters flow. Our board disagrees with the opinions of Mr. Anderson because they are factually inaccurate and contrary to the laws of Montana.

Anderson's premise is that all waters flowing through private land and that state- and county-owned rights of way are the property of the landowner. In fact, the state constitution and statutes clearly state, "All surface, underground, flood, and atmospheric waters [Yes! Even the snow and the rain.] within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law." (Art. IX, Sec. 3, par. 3.)

Mr. Anderson's quotation from one

of Aldo Leopold's works, which Mr. Anderson references in the hope of strengthening his opinion, in fact would reaffirm the language of the constitution, and work to defeat his own argument. The quotation: "... conservation will ultimately boil down to rewarding the private landowner who conserves the public interest." What is the public interest? Access to state waters.

Aldo Leopold is widely known and highly regarded as the "Father of Wildlife Management." Leopold's principle in his essay "Thinking Like A Mountain" is about a balanced and mutually beneficial relationship with all on the mountain making for a healthy natural system. In this essay Leopold discussed how an imbalance of the natural system resulted in the decimation of life on the mountain.

Mr. Anderson's "Montana Mountain" example of public and private land ownership speaks to the claim of rights of the private landowner. Leopold's essay says nothing about the rights on the "mountain." Therefore, Leopold's essay speaks nothing about the rights of a private landowner, least of all the right to bar public access to public waters which flow through his land. In truth it is about a balanced and



LARRY MADISON
Guest columnist

mutually beneficial relationship between men and land. Thus, Leopold, an avid hunter and fisher in his lifetime, argued for a "state of harmony," aka a "conservation ethic," for landowners and hunters and fishers. Balances, relationships and conservation ethics are achieved in our "Montana Mountain" by existing laws shaped on our mountain for harmony and mutual benefit for all.

As for Mr. Anderson's "tragedy of the commons" (where does this reference reside?): Montana's hunters and fishers are largely anything but commoners. In fact, they are largely conservationists who recognize that their hunting and fishing futures are dependent on their exercise of a conservation ethic, an ethic requiring the preservation of a state of harmony between men and land, as Leopold argues. To suggest or even imply otherwise, to imply Montana's hunters and fishers display

manic tendencies in their recreation, is to insult them all.

Mr. Anderson contends that the pending bills (he lumps them together at one point), in an attempt to provide for public access, would result in the taking of private property. Currently, a landowner is trespassing when he extends his fence over the public right of way (the land within the easement owned by the state adjacent to a bridge). SB 78 creates an additional right to (for) the private landowner. It gives him the right to extend his fence to a point where he heretofore could not legally go. In exchange for the acquisition of this right, the landowner is required to provide to the public a means to pass over, around, or through this barrier. And there is public funding available to him to do so. SB 78 is a concession to private property rights. And to include an abridged reference to SB 41 and its "eminent domain" focus in an argument that is principally focused on the stream-access issue is an irrelevance, because we are focused on an issue that impacts land that is already state- or county-owned. So, let's return to the landowner and the sportsman and access.

Let's consider the concept of "conservation easement," which is a volun-

tary and negotiated agreement between the landowner and the public, an agreement which benefits both. It is a means to achieve harmony. The landowner agrees to a form of compensation, sometimes the equivalent of millions of dollars in tax credits, sometimes cold, hard cash, in exchange for the promise not to develop the land commercially. The landowner reserves the right to do as he will with his own home, to continue to farm or to ranch, or even to lease, for profit (read "thousands"), the property to hunters and fishers. There is no taking of private property in this arrangement. As Aldo Leopold wrote, and as Mr. Anderson reminded us early in his piece, with his reference to this very same quotation, a reference which he attempted to use as a springboard to make his argument stand up, "conservation will ultimately boil down to rewarding the private landowner who conserves the public interest."

SB 78 is about the public interest. It provides a compromise to achieve a balance between public and private rights.

Larry D. Madison is president of the Headwaters chapter of the Federation of Fly Fishers. Board members Tom Ehlerl and Harvey Harris also contributed to this column.

Sunday,
March 25, 2007

STANDARD OPINION

Stream access

Senate Bill 78 should be
passed into law

It simply clarifies citizens'
basic right to access streams

If you're not already convinced of the need to further clarify the rights of all Montanans to access their beloved rivers and streams, this latest lawsuit should push you over the edge into the ranks of those firmly behind Senate Bill 78.

The lawsuit, filed last week by Ruby Valley landowner James Kennedy, claims people have no right to access streams from county bridges. In his suit against Madison County and the Public Lands Access Association, Inc., Kennedy claims floaters and anglers should not be allowed to walk on the public right of way next to a public bridge to get into the water.

What part of "public" does he not understand?

The law is clear that Montana's waterways are public property. The Montana Constitution declares that all waters in the state "... are the property of the State for the use of its people ..." and that principle has been reinforced a number of times in the courts and through binding attorney general opinions.

The right was further codified in the 1985 Montana Stream Access Law, but still it has been challenged a number of times over the years. SB 78 is simply an attempt to clarify existing rights. Nothing more, nothing less.

THE BILL SPEAKS for itself, stating upfront that it's a compromise solution "to maintain the delicate balance that is necessary to provide recreationists with access to public resources while protecting private property rights."

At the heart of the matter are fences that ranchers often tie into public bridge abutments. Their main purpose is to keep livestock in, but they sometimes also block public access to streams, either intentionally or not.

SB 78 recognizes the importance to ranchers of being able to connect fences to bridge supports. Technically, the state could probably prohibit fencing within the standard 60-foot county road rights of way, but it seeks a compromise stance instead: The fences can stay, as long as there's a way for the public to get past them to the streams — by way of a gate or a stile, for example.

And if a fence project leads to improved public access, landowners may even be reimbursed for their contributions to the public good. The bill would set aside \$10,000 a year for the next six years to reimburse landowners for fence projects.

The Department of Fish, Wildlife, and Parks estimates there are 131 bridge sites throughout the state where public access is impeded or unavailable because of a fence or an uncooperative landowner.

WITH PASSAGE OF SB 78, the state can begin working with landowners to improve access at these sites and ensure ranchers will continue to be able to keep their livestock safely penned up.

The bill has already passed the Senate on a bi-partisan 34 to 16 vote. It's now in the House Fish, Wildlife, and Parks committee although no hearing has been set.

Let's hope the House, like the Senate before it, recognizes the value of this bill and passes it on to the governor.

It's a bill that preserves private property rights by stressing that "any future attempts to broaden this statutory compromise should be resisted." It's also one that preserves the public's right to enjoy the state's bountiful blue-ribbon streams — a major attraction for natives and tourists alike.

Kennedy has every right to enjoy the privacy of his pristine Ruby Valley ranch, but he has to share the Ruby River that runs through it with us all.

So far this year, we've printed ...

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OPINION

Editorial board

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Do nothing to diminish access to rivers, streams

Here's hoping the watchdog groups will keep a close eye on the big-and-getting-bigger stream-access bill working its way through the state Senate.

Introduced by Sen. Lane Larson, D-Billings, the measure started out as an effort to compromise on an old hot-button issue by letting landowners attach fences to bridges, as long as they provided a way through the fence for

anglers.

The bill even provided a little money that Fish, Wildlife & Parks could use to help defray landowners' costs of modifying fences.

Seems reasonable enough, although we haven't observed many problems with access in the places where we go to let the fish torture us.

More problems seem to arise in southwestern Mon-



2007 LEGISLATURE

tana, where there are more newcomers on both sides of the equation.

And partly because of that, testified Jack D. Jones of Bozeman, the days of handshake agreements between landowners and anglers are fading into the

sunset.

"The influx of wealthy out-of-state, part-time Montanans arriving with the idea that our wildlife belongs to them" has changed the balance.

A decades-old law and court cases have upheld the right of the public to go between the high-water marks in rivers and streams, but getting to the streambed can be problematic in areas where the land is privately owned.

It's often accomplished at

bridge abutments, and an attorney general's opinion a few years ago upheld that practice.

But that hasn't kept some landowners from erecting — and attaching to the bridges — fences designed not to keep livestock in, but rather to keep people out.

Larson's bill would allow the fences, as long as there was a relatively easy way through them — stiles, a gate, or even just plastic pipe in a stretch so anglers don't tear their waders

going through.

Access to wildlife — even the kinds that swim — is one of the biggest attractions of Big Sky Country.

The bill, SB78, is five pages long, and eight pages of amendments are lined up for inclusion, most of them by access-oriented watchdog groups.

Nevertheless, there is potential for mischief here.

Anything that yields less public access to Montana's rivers and streams is unacceptable.

OUR OPINION



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Independent Record
Helena, Montana

Pass stream-access measure

Yet another lawsuit filed in a stream access dispute on the Ruby River — this one a countersuit by landowner James C. Kennedy, a central figure in the long-running fight — is a good argument in favor of passing the compromise legislation in House Bill 78.

That measure allows landowners to attach their fences to bridges as long as they don't prevent sportsmen's access to streams. In some cases the landowners

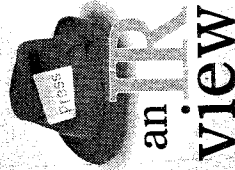
could be reimbursed for their effort.

Kennedy, a media executive, claims in his suit against Madison County and the Public Lands Access Association, Inc. that anglers block his driveway, park unsafely on county bridges and litter at the river. He seeks an injunction to stop the public from using the Lewis and Seyler bridges to get to the Ruby.

There is something odd about this. Can the public be barred from using

the public right of way where a road bridges a stream? Kennedy claims that his property rights are being violated, but isn't it his goal to deny the public the right to its property?

House Bill 78 was written to put this issue to rest at a time when the state Department of Fish, Wildlife and Parks says that access at 131 bridges in Montana is limited because of fences or "uncooperative landowners." The bill has passed the Senate and is in a committee in the House. It should be made law.



Editorial board

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Access bills seem to be headed right direction

Rep. Mike Milburn was right when he said he may be off his rocker to try to clarify Montana's stream access laws.

There are a few things in Montana that a right-thinking person doesn't mess with, and public access to fishing waters is one of them.

But we credit the Cascade Republican and Billings Democratic Sen. Lane Larson for at least

trying, because serious fights are brewing in some parts of the state.

Larson's bill, the one favored by recreationists, has passed the Senate and was sent to the House.

It gives something to landowners because it expressly authorizes attaching private fences to bridges, which are the most common access points to public waterways.

Anglers like this bill because it also requires an easy way through such fences — a stile, or even just a stretch of PVC pipe sheathing the barbed wire. The bill also provides some funding to help the landowner defray expenses of making the stream accessible.

"We've put fences to bridges forever," Milburn responds, "and we've crawled through fences forever. Now we're worried that we're going to

hook our bloomers on barbed wire?"

As written, Milburn's bill, the one favored by property-rights advocates and many landowners, makes no provision for passage through fences. It also appears to give adjacent landowners the right to restrict pedestrian access to the bridges themselves.

In most cases, we'd be inclined to agree with Milburn about getting through the barbed wire, but we've also seen some of the elab-

orate wiring jobs some landowners have done. They're aimed at keeping livestock in. It'd take an armor-plated half-track to get through some of them, and that is contrary to Montana tradition and law.

Near the end of a hearing Tuesday before the House Fish, Wildlife and Parks Committee, which he chairs, Milburn said he'd be willing to add to his bill a provision for stiles across fences.

That would be good; as a practical matter, it means there's not too much difference between the bills, except for the part of Milburn's that would let landowners restrict bridge access.

Larson's bill is preferred, because it makes cleaner work of cleaning up a contentious issue.

Unfortunately, the issue will be with us as long as the mountainous parts of Montana are getting more popular and populated.

OUR OPINION